

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LATOYA SIMMONS,

Petitioner,

v.

CASE NO. 2:13-CV-12531
HONORABLE GEORGE CARAM STEEH

MILLICENT WARREN,

Respondent.

**OPINION AND ORDER DENYING THE MOTION FOR RECONSIDERATION
AND DIRECTING THE CLERK OF THE COURT TO TRANSFER THE
MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Latoya Simmons, (“petitioner”), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which she challenged her conviction for armed robbery, M.C.L.A. 750.529; and possession of a firearm in the commission of a felony [felony-firearm], M.C.L.A. 750.227b. On March 7, 2014, this Court denied petitioner’s application for a writ of habeas corpus and also declined to issue a certificate of appealability or to grant leave to appeal *in forma pauperis*. See *Simmons v. Warren*, 2014 WL 902848 (E.D. Mich. March 7, 2014). Petitioner has now filed a notice of appeal along with an application to proceed with an appeal without prepayment of fees and costs, which this Court will treat in part as a motion for reconsideration of the Court’s previous decision to deny petitioner leave to appeal *in forma pauperis*. For the reasons that follow, the Court will deny petitioner’s motion for reconsideration. The Court will further order that petitioner’s motion to proceed *in forma pauperis* on appeal to be transferred to the United States Court of Appeals for the Sixth Circuit.

The Court will deny plaintiff's motion for reconsideration. U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F. Supp. 2d 628, 632 (E.D. Mich. 2001). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and show that correcting the defect will lead to a different disposition of the case. See *DirecTV, Inc. v. Karpinsky*, 274 F. Supp. 2d 918, 921 (E.D. Mich. 2003).

Because this Court previously denied petitioner leave to appeal *in forma pauperis* when it denied the petition for writ of habeas corpus, the Court will construe petitioner's motion for leave to appeal *in forma pauperis* as a motion for reconsideration of the Court's prior order to deny her leave to appeal *in forma pauperis* in this case. See *Pettigrew v. Rapelje*, No. 2008 WL 4186271, * 1 (E.D. Mich. September 10, 2008).

Petitioner's motion for reconsideration will be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied petitioner's habeas application and declined to issue a certificate of appealability or leave to appeal *in forma pauperis*. See *Hence v. Smith*, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

The Court will also order the Clerk of the Court to transfer petitioner's motion to proceed *in forma pauperis* on appeal to the Sixth Circuit. It is well settled that the filing of a notice of appeal transfers jurisdiction over the merits of the appeal to the appellate court. *Workman v. Tate*, 958 F. 2d 164, 167 (6th Cir. 1992). Petitioner's notice of

appeal divests this Court of jurisdiction to consider her motion that she be permitted to proceed *in forma pauperis* in the Sixth Circuit Court of Appeals. See *Johnson v. Woods*, 2013 WL 557271, * 2 (E.D. Mich. February 13, 2013); *Glick v. U.S. Civil Service Com'n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983); *Brinton v. Gaffney*, 560 F. Supp. 28, 29-30 (E.D. Pa. 1983). Because jurisdiction of this action was transferred from the district court to the Sixth Circuit Court of Appeals upon the filing of the notice of appeal, petitioner's motion to proceed *in forma pauperis* on appeal would be more appropriately addressed to the Sixth Circuit. See *Baker v. Perry*, 2012 WL 6097323, * 2 (E.D. Mich. December 6, 2012).

IT IS HEREBY ORDERED that petitioner's motion for a reconsideration is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court transfer the "Application to Proceed Without Prepaying Fees or Costs on Appeal" [Dkt. # 15] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

Dated: April 16, 2014

s/George Caram Steeh
 GEORGE CARAM STEEH
 UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on April 16, 2014, by electronic and/or ordinary mail and also on Latoya Simmons #786947, Huron Valley Complex - Womens, 3201 Bemis Road, Ypsilanti, MI 48197.

s/Barbara Radke
 Deputy Clerk